

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID ABARA,

Petitioner,

vs.

JACK PALMER, et al.,

Respondents.

3:10-cv-00688-LRH-VPC

ORDER

This is a habeas corpus case pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*. On November 18, 2010, this court entered an order in which it found that grounds 1, 2, 3, 4, 5, 6, 7, 8, and 11 of the petition are unexhausted in state court. (Docket #6.) Consequently, the court found the petition in this action to be a "mixed" petition -- one containing both claims exhausted in state court and claims not exhausted in state court. The court informed petitioner that as such, the entire petition is subject to dismissal, unless petitioner elects to abandon the unexhausted claims. *See Rose v. Lundy*, 455 U.S. 509, 521-22 (1982); *Szeto v. Rusen*, 709 F.2d 1340, 1341 (9th Cir.1983).

The court therefore granted petitioner thirty days to move for stay and abeyance under *Rhines*, show good cause for his failure to exhaust his unexhausted claims in state court, and present argument regarding the question whether or not his unexhausted claims are plainly meritless. Alternatively, the court granted petitioner thirty days to advise the court of his desire to abandon the unexhausted claims by filing a sworn declaration of abandonment, signed by the petitioner himself. The court expressly warned petitioner that his complete failure to respond to the court's order would

1 result in the dismissal of this petition as a mixed petition.

2 Thirty days have now passed and petitioner has not responded to the court's order of
3 November 18, 2010. Accordingly, **IT IS HEREBY ORDERED** that this petition for writ of habeas
4 corpus is **DISMISSED** without prejudice as a mixed petition containing both exhausted and
5 unexhausted claims.

6
7 DATED this 15th day of January, 2010.



8
9
10 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE